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January 9, 2006

Ex Parte Communication

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW – Room 4C-342
Washington, DC 20554

Re: *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45

Dear Ms. Dortch:

This letter restates the American Public Communications Council's ("APCC's") request for a ruling that service providers qualifying for the Universal Service Fund ("USF") *de minimis* exemption under the current rules be able to make direct USF payments if they so choose.[1] Further, if the Commission adopts a revised contribution scheme that includes a *de minimis* exemption,[2] APCC urges the Commission to make clear that providers qualifying for such an exemption may nonetheless choose to file and pay directly.

Under the current USF rules, payers whose annual USF contribution would be less than $10,000 qualify for a *de minimis* exemption. 47 CFR § 54.708. The rules state that payers qualifying for the *de minimis* exemption are not "required" to submit a direct contribution. *Id.* The rule does not *prohibit* service providers qualifying for the *de minimis* exemption from making direct USF contributions if they choose.

The vast majority of independent payphone service providers ("PSPs") qualify for the *de minimis* exemption because their annual USF payment would not exceed $10,000.[3] Many of these "*de minimis*" PSPs, however, pay substantially more in local

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[1] APCC has previously discussed this issue with the Commission staff. *See, e.g.*, Letter to Marlene Dortch from Albert H. Kramer and Robert F. Aldrich (August 23, 2005).

[2] *See Federal-State Joint Board on Universal Service*, Further Notice of Proposed Rulemaking, 17 FCC Rcd 3752 (2002).

[3] APCC's affiliate, APCC Services, Inc. ("APCC Services"), which collects payphone compensation under the Commission's payphone compensation rules for more than 1,500 independent PSPs, has conducted an analysis of the information it has

exchange carrier ("LEC") and interexchange carrier ("IXC") "pass-through" charges than they would pay in direct contributions.[4] In a 2004 order, the Commission clarified that under the current rules, PSPs and other resellers who pay direct contributions to the USF may not be subjected to double payment by also being assessed "pass-through" charges by their carrier suppliers.[5] For many of the "*de minimis*" PSPs who pay more in "pass-through" charges than they would pay in direct payments, the difference is great enough that they would prefer to make direct contributions to the USF in lieu of paying the "pass-through" charges assessed by carriers.

Some PSPs that qualify for *de minimis* treatment have tried to volunteer to make direct payments. The Universal Service Administrative Company ("USAC"), however, currently does not accept direct USF contributions from *de minimis* service providers.

USAC's refusal to accept direct contributions from *de minimis* payers is unfair to independent PSPs. As noted above, the average pass-through charges assessed by LECs -- $.86 per line per month -- greatly exceed the average direct USF payments made by direct paying PSPs. Because 99% of PSPs are compelled to pay pass-through charges in lieu of direct payments, those PSPs are effectively being compelled to pay indirectly to USF a higher percentage of their revenues than is paid by other PSPs and service providers who pay directly. Preventing 99% of PSPs from making direct USF payments if they choose thus puts them at an unfair competitive disadvantage vis-à-vis large PSPs, most notably their largest competitors, the incumbent LECs – whose payphone divisions aren't treated as *de minimis*. Preventing PSPs from making direct USF payments also runs counter to Section 276's goal of putting independent PSPs on an

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(Footnote continued)
regarding its PSP customers. APCC Services determined the number of payphones each customer has and requested information from some of its largest customers as to the amount of the direct payments they make to the USF fund. Based on that analysis, APCC Services determined how many of its customers are likely to meet the $10,000 threshold that subjects an entity to the direct payment requirement of the USF rules. APCC Services found that only about ten of its customers have a sufficient number of payphones to make it likely that they are subject to the direct payment requirement. The vast majority – about 99% -- of APCC Services' more than 1,500 PSP customers are small enough to qualify for the *de minimis* exception.

4 This occurs because the EUCL charges paid by PSPs almost always exceed their interstate and international end user revenue. As a result, LEC pass-through charges alone – the so-called "Federal Universal Service Fund" ("FUSF") charges, which are based on EUCL charges – generally exceed the direct payments that smaller PSPs would be making if they were not subject to the *de minimis* exception. According to APCC Services' survey, the USF payments made by direct paying PSPs average about $.27 per line per month. By contrast, based on LECs' access tariffs in effect as of February 2005, LEC pass-through charges averaged about $.86 per line per month.

5 *See Federal-State Joint Board on Universal Service*, Order on Reconsideration, 19 FCC Rcd 23824, ¶ 39 (2004).

equal footing with incumbent LECs.[6] Accordingly, the Commission should allow PSPs that qualify for the *de minimis* exemption to make direct payments to the USF should they so choose.

Allowing *de minimis* PSPs to make direct contributions would have a minimal impact on overall USF revenue. According to the Commission's most recent *Telephone Trends*, as of March 31, 2004, there were a total of 1,344,999 payphones, of which 529,211 were operated by independent PSPs. It is reasonable to estimate that approximately 61.5% of these payphones, or about 325,000, qualify for *de minimis* treatment.[7] As noted above, the average payment of pass-through charges to LECs by *de minimis* PSPs is $.86 per payphone per month, while the average direct contribution by non-*de minimis* PSPs is $.27 per payphone per month. Even if the entire $.86 per payphone per month in pass-through charges was currently paid into USF by the LECs (a highly unlikely assumption given that pass-through charges include, at a minimum recovery of LEC administrative costs), the amount of direct contributions that would be lost when a PSP converts from *de minimis* status to direct payment would average only $.59 per payphone per month.

Assuming that all *de minimis* PSPs elected to make direct contributions (also an unlikely result since some *de minimis* PSPs do pay less in pass-through charges than they would pay in direct contributions, and some others are too small to justify the administrative expense of preparing USF payment forms), the total amount of USF payments lost would be only $.59 x12 x 325,000, or about $2,300,000. In all likelihood, for the reasons just stated the amount actually lost would be substantially less. But in any event, even a $2.3 million loss would have a negligible impact on the $1.69 billion USF.

While the amount of payments saved by PSPs would have a negligible impact on USF, it would provide a significant economic benefit to PSPs and to the public interest in fostering widespread deployment of payphones. See 47 U.S.C. § 276(b). With the payphone industry subject to continual market pressure from wireless services, even a relatively small reduction in costs would permit many otherwise unprofitable

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6 *See e.g.*, 47 U.S.C. §§ 276(a) (prohibiting Bell Companies from discriminating in favor of their payphone services), (b)(1)(B) (requiring all LECs to eliminate subsidies for their payphones). LECs, of course, make direct USF payments from their payphone revenues rather than paying themselves pass-through charges. Thus, the 99% of independent PSPs who are forced to pay pass-through charges are paying, on average, a much higher percentage of their payphone revenues than are the LECs with whom they compete in the payphone market.

7 APCC Services' customers operate about 335,000 payphones nationwide. The 99% of those customers who are currently *de minimis* payers operate approximately 61.5% (206,000) of those payphones. It is reasonable to assume that a similar percentage of the payphones owned by independent PSPs who are not APCC Services customers are operated by *de minimis* payers.

payphones to remain in service. Therefore, the Commission should direct USAC to accept direct USF contributions from service providers who choose to make them, even if a service provider qualifies for the *de minimis* exemption.

Sincerely,

Robert F. Aldrich

Albert H. Kramer
Robert F. Aldrich

cc: Narda Jones
Cathy Carpino
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Carol Pomponis

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